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Hearing Date: November 16, 2023
Time: 1:00 p.m.
Objections Due: November 9, 2023

Attorneys for 3214 Thirty First Street LLC

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY

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In re:

Chapter 11
Case No. 23-18993 (MBK)

RITE AID CORPORATION, et al.,

(Jointly Administered)

Debtors.¹

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**OBJECTION OF 3214 THIRTY FIRST STREET LLC TO THE DEBTOR'S MOTION
FOR ENTRY OF AN ORDER (I) AUTHORIZING (A) REJECTION OF CERTAIN
UNEXPIRED LEASES OF NON-RESIDENTIAL REAL PROPERTY AND (B)
ABANDONMENT OF ANY PERSONAL PROPERTY, EACH EFFECTIVE AS OF THE
REJECTION DATE AND (II) GRANTING RELATED RELIEF**

3214 Thirty First Street LLC, a New York limited liability company, as successor in interest to Solil Management Corp. ("Prime Landlord"), by its attorneys, Certilman Balin Adler & Hyman, LLP, hereby objects to Debtor's Motion for Entry of an Order (i) Authorizing (A) Rejection of Certain Unexpired Leases of Non-Residential Real Property and (B) Abandonment of any Personal Property, Each Effective as of the Rejection Date and (ii) Granting Related Relief ("Rejection Motion"), respectfully represents as follows:

¹ The last four digits of Debtor Rite Aid Corporation's tax identification number are 4034. A complete list of the Debtors in these chapter 11 cases and each such Debtor's tax identification number may be obtained on the website of the Debtors' proposed claims and noticing agent at <http://restructuring.ra.kroll.com/RiteAid> The location of Debtor Rite Aid Corporation's principal place of business and the Debtor's service address in these chapter 11 cases is 1200 Intrepid Avenue, 2nd Floor, Philadelphia, Pennsylvania 19112.

BACKGROUND FACTS

1. By Lease dated May 15, 1984, as amended by Lease Amendment No. 1 dated February 10, 2004, and by Second Amendment to Lease dated January 26, 2015, Prime Landlord leased the real property located at 32-14 31st Street, Astoria, New York (the “Premises”) to Genovese Drug Store, Inc. (the “Debtor”)(the “Lease”). Annexed hereto as “**Exhibit A**” is a copy of the Lease and related amendments.

2. On June 21, 2023, the Debtor entered into a Sublease with 32-14 31st Food LLC (the “Subtenant”) to lease approximately 11,475 leasable square feet of space and appurtenances, and use of the parking lot at the Premises. Annexed hereto as “**Exhibit B**” is a copy of the Sublease.

3. Prime Landlord received correspondence dated October 16, 2023, from the Debtor advising of the surrender of the Premises. Annexed hereto as “**Exhibit C**” is a copy of said correspondence.

4. On October 16, 2023, Debtor filed the Rejection Motion which reflects the Debtors rejection of the unexpired Lease for the Premises.

5. On October 20, 2023, Prime Landlord advised the Debtor that they objected to the rejection of the Premises due to the Subtenant’s possession of the Premises. On October 18, 2023, Prime Landlords representative inspected the Premises, and the Subtenant was actively performing work to open a supermarket. Annexed hereto as “**Exhibit D**” is a copy of said correspondence.

6. Prime Landlord also notes that the Lease requires the condition of the Premises to be in good condition and repair at the time of surrender see Lease Section 10[c]. The Premises is presently not in good condition as the Subtenant is in the middle of building out the Premises.

BASIS FOR OBJECTION

7. Section 365(d)(4)(A) provides as follows:

Subject to (B), an unexpired lease of non-residential real property under which the debtor is the lessee shall be deemed rejected, and the trustee shall immediately surrender that nonresidential real property to the lessor, if the trustee does not assume or reject the unexpired lease....

8. Here, the Debtor cannot reject the Lease and surrender the Premises as the Premises is still occupied by the Subtenant, and upon information and belief, cannot be removed.

9. Section 365(h)(1)(A)(ii) of the Bankruptcy Code provides as follows:

If the trustee rejects an unexpired lease of real property under which the debtor is the lessor and –

(ii) if the term of such lease has commenced, the lessee may retain its rights under such lease (including rights such as those relating to the amount and timing of payment of rent and other amounts payable by the lessee and any right of use, possession, quiet enjoyment, subletting, assignment, or hypothecation) that are in or appurtenant to the real property for the balance of the term of such lease and for any renewal or extension of such rights to the extent that such rights are enforceable under applicable nonbankruptcy law.

10. The Debtor should not be allowed to reject the Lease until the Subtenant is removed. The Prime Landlord has no contractual rights, therefore making it difficult to remove the Subtenant from possession of the Premises.

RESERVATION OF RIGHTS

11. Prime Landlord reserves the right to amend and/or supplement this Objection to assert any additional objections regarding the rejection of the Lease for the Premises.

WHEREFORE, Prime Landlord requests that the Court sustain this Objection, deny the Rejection Motion as it pertains to the lease for the premises located at 32-14 31st Street, Astoria, New York, and grant such other, further and related relief as the Court deems just, proper and equitable.

Dated: East Meadow, New York
November 9, 2023

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By: 

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